

SUMMARY OF THE DEPOSITION

OF

DAVID A. KENNEDY

The deposition of David A. Kennedy was taken under oath on May 28, 1986. Mr. Kennedy has a bachelors degree in the field of natural resources from the University of Massachusetts and served in the United States Army for two years. On the day of the deposition, Mr. Kennedy was the City Planner and had occupied said position for three years. Prior thereto, he had been an assistant in that office for a period of approximately nine years. With the exception of his educational time and his service in the military, Mr. Kennedy has resided in New Bedford all his life (pp. 13-15).

The Planning Department of which Mr. Kennedy is the head is traditionally charged with the provision and maintenance of recreational facilities in the City of New Bedford, including the waterfront area (p. 31). Mr. Kennedy had been present at East Beach within the last year to use it as a recreational facility for use by his family and him (p. 51).

For the first twenty-three or twenty-four years of his life, Mr. Kennedy lived in the West End of New Bedford (p. 54). During Mr. Kennedy's lifetime, to the best of his knowledge, north of the hurricane barriers, the New Bedford side of the harbor has not been used for bathing (p. 55). He has not seen anyone use the Fairhaven side for bathing either

(p. 56). As a child, his father gave him instructions about going into the water, stating that if he jumped into it, he would probably "bounce off it." (p. 56).

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA
Plaintiff

-VS-

AVX CORPORATION, ET AL
Defendants

and

COMMONWEALTH OF MASSACHUSETTS
Plaintiff

-VS-

AVX CORPORATION, ET AL
Defendants

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

Civil Action
No. 83-3882-Y
(Consolidated)

DEPOSITION of DAVID A. KENNEDY, a witness of
lawful age, taken on behalf of the Defendants, in the
above-entitled cause wherein the United States of America
and the Commonwealth of Massachusetts are the Plaintiff,
and AVX Corporation, et als, are the Defendants, pending in
the District Court of the United States for the District
of Massachusetts, pursuant to Notice and agreement of parties
before Raymond Goudreau, a Notary Public in and for the
Commonwealth of Massachusetts, at the Offices of Ropes and
Gray, 225 Franklin Street, Boston, Massachusetts, 02740,
on Wednesday, the 28th day of May, 1986, at 10:31 a.m.

GOUDREAU & KRYSTON

COURT REPORTING SERVICE

SUITE 25 18 BROADWAY

TAUNTON, MASSACHUSETTS 02780

823-4659

APPEARANCES:

Office of General Counsel
(By Mary Anne Maul, Atty-at-Law)
3300 Whitehaven Street, N.W.
Page 1, Bldg. Room 290
Washington, D.C.
Represents National Oceanic & Atmospheric Adm.

ROPES & GRAY
(By Marjory D. Robertson, Atty-at-Law)
225 Franklin Street
Boston, Massachusetts 02110
Represents Aerovox Corp.

McLAUGHLIN & FOLAN, P.C.
(By David A. McLaughlin, Esq.)
448 County Street
New Bedford, Massachusetts 02740
Represents Belleville Industries, Inc.

MORGAN, LEWIS & BOCKIUS
(By Janine M. Sweeney, Atty-at-Law)
1800 M. Street, N.W.
Washington, D.C. 20036
Represents Federal Pacific Electric Company.

NUTTER, McCLENNEN & FISH
(By Andrew D. Kaizer, Esquire)
600 Atlantic Avenue
Boston, Massachusetts 02110
Represents AVX, Corp.

RIVKIN, RADLER, DUNNE & BAYH
(By Gary D. Centola, Esquire)
100 Garden City Plaza
Garden City, New York 11530
Represents Firemans Fund Insurance Company

MORRISON, MAHONEY & MILLER
(By Michael F. Aylward, Esquire)
55 Court Street
Boston, Massachusetts 02108
Represents CNA

APPEARANCES CONT'D:

DAY BERRY & HOWARD
(By Carrollyn S. Kelly, Atty-at-Law)
260 Franklin Street
Boston, Massachusetts 02110-3109
Represents Aetna Life & Casualty.

DRINKER, BIDDLE & REATH
(By T. Andrew Culbert, Esquire)
1100 Philadelphia National Bank Building
Broad and Chestnut Streets
Philadelphia, Pennsylvania 19107
Represents Lumbermens Ins.

DESMARAIS & CROTTY
(By William R. Connolly, Esquire)
446 County Street
New Bedford, Massachusetts
Represents the City of New Bedford.

I N D E X

<u>Deposition of:</u>	<u>Direct</u>	<u>Cross</u>
David A. Kennedy		
(By Mr. McLaughlin)	12	
(By Ms. Maul)		60

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page</u>
1	Deposition notice	7
2	New Bedford EAS Biological Environment Terrestrial Ecology	18
3	Interim Summary Report on Combined Sewer Overflows Phase I	18
4	City of New Bedford, Massachusetts Sewer System Evaluation Survey	19
5	City of New Bedford, Massachusetts, Section 301(h) Application for Modification of Secondary Treatment Requirements for Discharge into Marine Waters	19
6	Acushnet Estuary PCBs (Metcalf & Eddy/Engineers) Data Management File Report	20

(May 28, 1986
Wednesday, 10:31 a.m.)

STIPULATIONS

MR. McLAUGHLIN: This is the
deposition notice that I would like to have marked,
a copy of it.

(Whereupon, the deposition notice
was then marked as Exhibit 1 for
identification.)

MR. McLAUGHLIN: Mr. Connolly, do
you have a copy of the deposition notice?

MR. CONNOLLY: I do. Yes, I do.

MR. McLAUGHLIN: I would like to go
over the understanding that we discussed prior to the
commencement of the deposition and that is that with
respect to the various paragraphs of Exhibit A of the
Notice of Deposition which has been marked as
Exhibit 1 for identification that, with respect to
Paragraph 1 as of this time, a Mr. Cambra is the
party designated by the city to testify as to that
paragraph?

MR. CONNOLLY: And also perhaps John
Bullard.

MR. McLAUGHLIN: And as to Paragraph 2,
Mr. Kennedy will advise whether what information, if

1 any, exists?

2 MR. CONNOLLY: To the best of his
3 knowledge.

4 MR. McLAUGHLIN: Mr. Cambra.
5 will be designated for Paragraph 3?

6 MR. CONNOLLY: Yes.

7 MR. McLAUGHLIN: As to Paragraph 4,
8 as of now, there is nobody designated but later on in
9 the day you will try to contact Mr. Vosher?

10 MR. CONNOLLY: Yes, I will.

11 MR. McLAUGHLIN: And as to Paragraph
12 No. 5. That has not been determined yet but it may be
13 Mr. Saunders?

14 MR. CONNOLLY: That is correct.

15 MR. McLAUGHLIN: As to No. 6,
16 Mr. Kennedy will testify?

17 MR. CONNOLLY: Yes.

18 MR. McLAUGHLIN: As to No. 7,
19 Mr. Calnan?

20 MR. CONNOLLY: Yes.

21 MR. McLAUGHLIN: As to No. 8,
22 Mr. Bourque?

23 MR. CONNOLLY: Yes.

24 MR. McLAUGHLIN: And as to No. 9?

1 Mr. Kennedy will testify to what knowledge, if any,
2 exists?

3 MR. CONNOLLY: Yes.

4 MR. McLAUGHLIN: No. 10, Mr. Bourque?

5 MR. CONNOLLY: Yes.

6 MR. McLAUGHLIN: No. 11, at present,
7 it's intended that Mr. Cambra will testify, if any
8 knowledge exists?

9 MR. CONNOLLY: That's uncertain at
10 this point. I haven't had a chance to confer with
11 him. It is unknown at this point if there is anyone
12 eligible to be designated.

13 MR. McLAUGHLIN: With respect to
14 No. 12, if any information exists, will be Mr. Cambra
15 and/or Mr. Kennedy?

16 MR. CONNOLLY: Mr. Cambra.
17 I believe. I don't believe Mr. Kennedy.

18 MR. McLAUGHLIN: No. 13, to the extent
19 that such information exists, Mr. Kennedy?

20 MR. CONNOLLY: No. The same response
21 as to No. 4.

22 MR. McLAUGHLIN: To be designated
23 later?

24 MR. CONNOLLY: If there is any, I will

1 attempt to contact Mr. Vosher today.

2 MR. McLAUGHLIN: No. 14, Mr. Calnan?

3 MR. CONNOLLY: Yes.

4 MR. McLAUGHLIN: And Mr. Kennedy as
5 to No. 15? For the location of information.

6 MR. CONNOLLY: Yes.

7 MR. McLAUGHLIN: The same for No. 16?

8 MR. CONNOLLY: Sixteen, there is no
9 one.

10 MR. McLAUGHLIN: I understand someone,
11 some witnesses has to make that statement for the
12 record so that will be Mr. Kennedy?

13 MR. CONNOLLY: Mr. Kennedy will say
14 to the best of his knowledge, there is nobody.

15 MR. McLAUGHLIN: To clarify No. 15
16 for all of the counsel, we were informed this morning
17 after Mr. Connolly's arrival that it is the position of
18 the city that they do not have information with respect
19 to Paragraph 15 because two weeks to cause people to
20 find that information, we are not conceding to that
21 position though.

22 No. 17?

23 MR. CONNOLLY: Unknown at this point
24 if there would be any designee but I will attempt to

1 try to ascertain if there is someone that would be
2 available with whatever documents would be available.

3 MR. McLAUGHLIN: Mr. Kennedy as to
4 No. 18?

5 MR. CONNOLLY: Yes.

6 MR. McLAUGHLIN: And as to the extent
7 of information that is available, Mr. Kennedy on 19?

8 MR. CONNOLLY: My understanding is
9 there is no information. There is no one available to
10 designate. He would testify to his knowledge there
11 would be no one that would fit that request.

12 MR. McLAUGHLIN: Okay. Thank you.

13 MR. CONNOLLY: No one from the city,
14 rather.

15 MR. McLAUGHLIN: Right. Okay. With
16 respect to the various witnesses today, what is your
17 pleasure, Mr. Connolly, with respect to notarization?

18 MR. CONNOLLY: I conferred with all
19 of them. Mr. Kennedy has informed me he would waive
20 his right to read and sign it. The others have not
21 made their intentions known to me at this point.

22 MR. McLAUGHLIN: I have been informed
23 as, you know, this deposition is being taken as part of
24 a joint defense and we would ask that the witnesses

1 read and sign. Waiving the notarization before any
2 Notary. Not waiving notarization but before any
3 Notary.

4 MR. CONNOLLY: I think the witness
5 has a right not to do that.

6 MR. McLAUGHLIN: I think the party
7 claiming the notice can insist.

8 MR. CONNOLLY: Maybe we can discuss
9 this later. As of right now, Mr. Kennedy informed me
10 he wishes to waive his right to read it and sign it,
11 having in mind the time and expense involved in this
12 and his efforts.

13 MR. McLAUGHLIN: Filing and sealing
14 would be waived.

15 MR. CONNOLLY: I have no control over
16 the filing and sealing.

17 MR. McLAUGHLIN: Okay. Other defense
18 counsel will waive the filing and sealing?

19 MR. CENTOLA: No objections.

20 DAVID A. KENNEDY, a witness called
21 on behalf of the Defendants, having been duly sworn on
22 oath deposes and says as follows:

23 DIRECT EXAMINATION

24 Q (By Mr. McLaughlin) What is your name?

1 A My name is David Kennedy.

2 Q Where do you live, Mr. Kennedy?

3 A In New Bedford.

4 Q What is your residential address?

5 A 52 Moss Street.

6 Q How long have you lived there?

7 A Seven years.

8 Q Where did you live before that?

9 A 175 Cottage Street.

10 Q And in what city?

11 A In New Bedford.

12 Q For how long did you live on Cottage Street?

13 A Five years.

14 Q Where did you live before that?

15 A 52 Florence, New Bedford.

16 Q How long did you live there?

17 A Since I am 38, I am trying to subtract. The balance
18 of my life.

19 Q Approximately 24 years, 25?

20 A You are much better at addition than I am.

21 Q What do you do for a living?

22 A Presently I am the City Planner for the City of New
23 Bedford.

24 Q How long have you been City Planner?

1 A Three years.

2 Q What did you do before that?

3 A I was the Assistant City Planner.

4 Q For how long were you the Assistant City Planner?

5 A Four years.

6 Q And what did you do before that?

7 A I was the Junior Planner.

8 Q How long were you the Junior Planner for the City of
9 New Bedford?

10 A Two years.

11 Q And what did you do before that?

12 A I was the Junior Planner I for three years. It's been
13 a long history.

14 Q What did you do before that?

15 A United States Army.

16 Q And what rank did you have?

17 A Sergeant E5.

18 Q How long were you in the Army?

19 A Two years.

20 Q What did you do before that?

21 A Student.

22 Q Where?

23 A University of Massachusetts.

24 Q Did you receive a degree?

1 A Yes.

2 Q In what field?

3 A Food and natural resources.

4 Q That is a Bachelor's degree?

5 A Bachelor's degree.

6 Q Have you received any degrees subsequent to the
7 Bachelor's degree?

8 A None.

9 Q Have you taken any college-level courses since then?

10 A None.

11 Q Have you taken any continuing study courses?

12 A Yes.

13 Q What types of courses did you take?

14 A City planning courses.

15 Q Where did you take those?

16 A Northeastern University.

17 Q Were you taking those pursuant to a degree program?

18 A No.

19 Q Would you briefly describe your duties as City Planner
20 for the City of New Bedford?

21 A To prepare plans and studies going to the economic
22 base, land use, transportation systems of the City of
23 New Bedford, prepare reports to the general body of the
24 City Council, assist the Planning Board, the Historical

1 Commission and that is it.

2 Q What were your duties as Assistant City Planner?

3 A The same.

4 Q Who was the City Planner or Planners while you were
5 Assistant City Planner?

6 A Richard Walega.

7 Q Mr. Kennedy, you are testifying today as a designee of
8 the City of New Bedford. You understand that?

9 A Could you explain that a little bit more in detail?

10 Q Sure. In front of you is Exhibit No. 1 of this
11 deposition. Have you seen that document or a similar
12 document prior to the commencement of this deposition?

13 A Yes, I have.

14 Q And are you aware that you have been designated by the
15 city to respond to certain aspects of the deposition
16 which is one?

17 A Yes, I am.

18 Q In preparation for your testimony today, what did you
19 do and exclude from that response, any communications
20 which you may have had with counsel for the City of
21 New Bedford.

22 A I assembled the documents which I felt were pertinent
23 to those sections which I was being asked to respond to.

24 Q I'm going to ask you to turn to Exhibit A of Exhibit

1 No. 1 and you have heard the colloquy between
2 Mr. Connolly and me prior to the inquiries that I
3 started to make of you that you have been designated
4 to the extent such knowledge exists. You testified
5 with respect to Paragraph 2.

6 A Yes.

7 Q Turning to Page 2 of Exhibit A, Paragraph 6.

8 A Yes.

9 Q To the extent the knowledge exists, Paragraph 9?

10 A Yes.

11 Q Paragraph 15?

12 A Yes.

13 Q Paragraph 16?

14 A Yes.

15 Q Paragraph 18?

16 A Yes.

17 Q Paragraph 19?

18 A Yes.

19 Q What documents did you bring with you?

20 A The New Bedford Environmental Assessment Study
21 Biological Environment Terrestrial Ecology prepared by
22 Camp Dresser & McKee consultant for the City of New
23 Bedford.

24 MR. McLAUGHLIN: I will ask this be

1 marked as Exhibit No. 2.

2 MR. CONNOLLY: Off the record.

3 (Off the record.)

4 (Whereupon, the New Bedford EAS
5 Biological Environment Terrestrial
6 Ecology was then marked as Exhibit
7 No. 2 for identification.)

8 Q Mr. Kennedy, the document which is now marked as
9 Exhibit No. 2 for identification, what is that again?

10 A Environmental Assessment Study.

11 Q For the City of New Bedford prepared by Camp Dresser
12 & McKee?

13 A By Camp Dresser & McKee.

14 Q And what year was that?

15 A I can't answer that at this time. It may be in here
16 but I'm not sure. Circa of 1978.

17 Q And the next document you brought with you?

18 A Interim Summary Report on Combined Sewer Overflows
19 Phase I.

20 MR. McLAUGHLIN: I ask that be marked
21 as Exhibit No. 3 for identification.

22 (Whereupon, the Interim Summary
23 Report on Combined Sewer Overflows
24 Phase I was then marked as Exhibit 3
for identification.)

Q Exhibit No. 3 was prepared for the city by Camp

1 Dresser & McKee?

2 A That is correct.

3 MR. McLAUGHLIN: We will mark this as
4 Exhibit No. 4.

5 (Whereupon, the City of New Bedford,
6 Massachusetts Sewer System Evaluation
7 Survey was then marked as Exhibit
8 No. 4 for identification.)

8 Q Exhibit No. 4 is a Sewer System Evaluation Survey
9 also prepared for the City of New Bedford by Camp
10 Dresser & McKee?

11 A That is correct.

12 Q And I see on the front cover on the lower right-hand
13 corner the words "Final Interim Report." Were there
14 any subsequent reports on that subject proposed by
15 Camp Dresser & McKee?

16 A No, there weren't.

17 (Whereupon, the City of New Bedford,
18 Massachusetts, Section 301(h)
19 Application for Modification of
20 Secondary Treatment Requirements for
Discharge into Marine Waters was then
marked as Exhibit 5 for identification.)

21 Q Exhibit 5, Section 301(h) Application for Modification
22 for Secondary Treatment Requirements for Discharge into
23 Marine Waters Volume I dated December 2nd, 1983, that
24 was prepared for the City of New Bedford by Camp

1 Dresser & McKee?

2 A That is correct.

3 Q There is a Volume II?

4 A There is.

5 Q Has that been produced?

6 A No. I could not locate that at the time that I
7 received notice. It is available though.

8 (Whereupon, the Acushnet Estuary
9 PCBs (Metcalf & Eddy/Engineers)
10 Data Management File Report was
then marked as Exhibit 6 for
identification.)

11 Q Exhibit 6 is the Acushnet Estuary PCBs Data Management
12 Final Report from Metcalf & Eddy/Engineers which logo
13 of the EPA is on the front?

14 A That's correct.

15 Q Mr. Kennedy, in preparation for this deposition, one
16 of the things you did was located the documents which
17 have been marked as Exhibits 2 through 6 for
18 identification; is that correct?

19 A That is correct.

20 Q What else did you do?

21 A That is it.

22 Q You did not review any studies that you might have
23 conducted yourself?

24 A No.

1 Q To your knowledge, and I'm referring to Paragraph 2
2 of the Notice of Deposition, what information, if any,
3 do you have regarding the subject matter of
4 Paragraph 2 of Exhibit 1?

5 A To the best of my knowledge, the most inclusive study
6 has been prepared by Dr. Philip Gidley of Fairhaven,
7 Massachusetts. He does possess historical records of
8 sampling for industries for the City of New Bedford for
9 the past 15 years.

10 Q Does the City of New Bedford have any information
11 regarding investigations or studies such as those set
12 forth in Paragraph 2?

13 A Not to my knowledge.

14 Q To your knowledge, has the city itself or any party
15 in contract with the city conducted such investigations
16 or studies as referred to in Paragraph 2?

17 A Parties and contracts with the City of New Bedford,
18 yes. That would be Dr. Philip Gidley.

19 Q Dr. Gidley has entered into contracts with the City
20 of New Bedford and conducted studies similar to those
21 set forth in Paragraph 2?

22 A To the best of my knowledge, yes.

23 Q What is your best estimate as to the time of that
24 contract was entered into?

1 A Prior to 1970. Possibly 1965.

2 Q Were Dr. Gidley's investigation or studies reduced to
3 written form?

4 A I'm not sure if it was written or printed. I have not
5 seen it.

6 Q You have not seen a report from Dr. Gidley?

7 A Regarding PCBs? Can you be more specific? Regarding
8 this incident here?

9 Q Paragraph 2, "Heavy metals or any hazardous substance,
10 effluent, or pollutant." Of any nature.

11 A I have seen reports generated by Dr. Gidley concerning
12 the Acushnet River Estuary and the New Bedford Harbor.
13 I'm not certain whether they target PCBs or heavy
14 metals. There was some concern there.

15 Q Did you see those reports as part of your duties as an
16 employee of the City of New Bedford?

17 A I have seen them, yes.

18 Q And does the city possess a copy of those investigations
19 or studies?

20 A I would assume that they do.

21 Q And the care, custody or control of what department of
22 the city would those studies be?

23 A Not the City Planning. I have no knowledge of where
24 they would be in the city records.

1 Q If you were to look for them, would you look at the
2 Engineering Department?

3 A If I were to look for them, I would probably find them
4 if I had some time. Probably look in the Engineering
5 Department.

6 Q Do you have any recollection of the caption of those
7 studies?

8 A No, I don't.

9 Q Other than the Gidley investigation or study, do you
10 know of any other investigation or study as set forth
11 in Paragraph 2 of Exhibit 1 which was conducted either
12 by the city or on behalf of the city?

13 A I would cite the 301(h) study conducted by Camp
14 Dresser & McKee which is Exhibit No. 5, Volume I and II.

15 Q Other than the Gidley study and Exhibit No. 5, do you
16 know of any other investigations or studies referring
17 to the subject matter of Paragraph 2 of Exhibit 1
18 which was conducted by the city or on behalf of the
19 city?

20 A I would cite the Environmental Assessment of the
21 Fairhaven/New Bedford Bridge replacement, United
22 States Department of Transportation and contract
23 between the Federal Highway Administration and the
24 Massachusetts Department of Public Works.

1 Q Have you seen a copy of that investigation or report?

2 A Yes, I have.

3 Q And you saw that in your duties as Planner for the
4 City of New Bedford?

5 A Yes.

6 Q And the city possesses a copy of that?

7 A Yes.

8 Q Is it in the Planning Department?

9 A Yes.

10 MR. McLAUGHLIN: Mr. Connolly, I
11 think we recognize that the city did not have months
12 to prepare for this deposition, receiving notice only
13 the middle of last week. If possible sometime today,
14 I would appreciate, if you could, have someone from
15 the city try to look for that study that was just
16 referred to by Mr. Kennedy and also Volume II of
17 Exhibit 5, I believe.

18 THE WITNESS: Both of those could be
19 obtained locally here from the Massachusetts D.P.W.
20 and Camp Dresser & McKee at One Center Plaza.

21 MR. McLAUGHLIN: If they have it in
22 the city, probably someone coming up tomorrow could do
23 that.

24 Q Any other investigation or studies of which you are

1 aware of, Mr. Kennedy, which were conducted either
2 by the City of New Bedford or for the City of New
3 Bedford with respect to information contained in
4 Paragraph 2?

5 A No.

6 Q With respect to Paragraph 6 on Page 3 of Exhibit A,
7 what, if anything, did you do in preparation for your
8 testimony today on that paragraph?

9 A I misplaced the document that I just referred to as
10 the Environmental Assessment of the Fairhaven/New
11 Bedford Bridge.

12 Q Other than that, did you do anything else?

13 A No.

14 Q Mr. Kennedy, what is the source of your knowledge
15 with respect to the information requested by
16 Paragraph 6, in general?

17 A In general, not having any background in any of the
18 mentioned categories, chemical and biological, my
19 interpretation is quite limited if nonexistent.

20 Q Do you know of any documents which contain information
21 regarding the historical condition?

22 A I would assume that the United States Army Corps of
23 Engineers who conducted maintenance dredging of the
24 harbor channel, circa 1966 would have done an elaborate

1 biometric profile of the New Bedford Harbor.

2 Q Other than that, do you know of any studies, documents
3 or reports which contain information regarding the
4 historical condition of the New Bedford Harbor?

5 A No.

6 Q Mr. Kennedy, what information, if any, do you possess
7 regarding the 1966 dredging of the New Bedford Harbor
8 by the Army Corps of Engineers?

9 A I possess none of that information. As a matter of
10 record of the City Planner library files.

11 Q You don't have anything in the library files regarding
12 the dredging?

13 A Not in the City Planning, no.

14 Q How did you become aware that such dredging occurred?

15 A From the United States Army Corps of Engineers
16 permitted it somewhere in the vicinity of 1965 to 1966.

17 Q What party had applied for that permit?

18 A I'm not familiar with that.

19 Q And you are just aware that there was some permit?

20 A Yes. We have been trying to conduct further maintenance
21 dredging in the City of New Bedford in the harbor
22 channel since 1970 and since the Environmental
23 Protection Agency has changed the location of the
24 U.S.P. and bulkhead lines, we have been unable to do

1 that. The Protection Agency makes it very difficult
2 to do any type of dredging now in industrialized
3 harbors. We have looked at historical data and the
4 Army Corps of Engineers does possess that data. We
5 do not. To my knowledge, a piece of it may reside
6 in the Department of Public Works. I have never looked.

7 Q Turning to Paragraph 9 of Exhibit A, it's on Page 4
8 at the bottom. What information, if any, does the
9 City of New Bedford possess regarding the, "Historical
10 data of the fishery catches landed in New Bedford"?

11 A There isn't available publications by NOAA called
12 Fisheries of the United States. It's dated by year
13 and put out by the United States Department of Commerce.

14 Q We know that document is available. Other than that
15 document, what other data is possessed by the city
16 with respect to that subject?

17 A No data compiled by the city but The Standard Times,
18 which is the local newspaper bureau compiling daily
19 catches.

20 Q Other than those two sources, NOAA and The New Bedford
21 Standard Times, what other data are you aware of?

22 A I am not aware of any.

23 Q With respect to Paragraph 15.

24 THE WITNESS: May I just add now seeing

1 the other side of 4 to 5 here (indicating), records
2 of the quantity and value of all other fish landed in
3 New Bedford. I would think that the New Bedford fish
4 auction which is held daily at 8:00, historically would
5 possess a running tabulation of that information
6 probably available through the Harbor Development
7 Commission.

8 Q The Harbor Development Commission is responsible for
9 the maintenance of the facility in which the fish
10 auction is conducted?

11 A I believe that is correct.

12 Q And owns the building in which the fish auction is
13 conducted?

14 A That is correct. I am not sure where the auction is
15 being held right now since the strike.

16 MR. McLAUGHLIN: Off the record.

17 (Off the record.)

18 THE WITNESS: Traditionally, the
19 fish auction has been held at the Wharfinger Building
20 on Piers 3/4.

21 MR. CONNOLLY: He is not aware of --
22 you are not aware of where it is presently held?

23 THE WITNESS: Since the New Bedford
24 fisherman's strike I am unsure as to where the auction

1 is being held on a day-to-day basis.

2 Q To the best of your knowledge, who are the present
3 members of the Harbor Development Commission?

4 A Richard Walega, John Linehan, Wayne Richman, Edward
5 Illsui, there are two other members. I don't recall
6 their names.

7 Q They are not employees of the City of New Bedford?

8 A No, they are not.

9 Q That is a separate body politic?

10 A Yes.

11 Q Creature of the statute, I believe; is that correct?

12 A Same creature as Massport.

13 Q Turning to Paragraph 15, what information, if any, does
14 the city possess regarding the data on municipal waste
15 disposal practices and sites of the City of New Bedford?

16 A I would have to cite the New Bedford Department of
17 Public Works Division of Solid Waste.

18 Q Their records?

19 A Yes.

20 Q And were copies of those records originals brought
21 with you today?

22 A Not by myself.

23 Q Do you know if anyone has brought them?

24 A I don't know what anyone else has brought.

1 Q Are those documents collected at one location?

2 A Collectively at one location. I don't know. That is
3 a completely foreign floor at the City Hall. I don't
4 know how they keep their records. I would assume that
5 they do, yes.

6 Q Is your response the same as to Paragraph 16?

7 A My response to Paragraph 16 would be that I am not
8 aware of anyone that would control the waste disposal
9 practices of the fishing industry.

10 THE WITNESS: What type of waste
11 disposal practices would be concerned with in the
12 fishing industry? I'm curious.

13 Q Any kind including disposition of gurry or spent fuels.

14 A I mentioned that simply because for many years there
15 has been no coordinated collection of commercial waste.
16 Those items contiguous to the fishing fleet which may
17 be put on board at a dock site kind of servicing until
18 1983 when the Harbor Development Commission placed
19 trash containers on all city piers and wharfs. That
20 is the extent of my knowledge as to how the policed
21 themselves. As far as gurry or any type of oil, I am
22 not sure that there is a person that oversees the
23 control of that other than the United States Coast
24 Guard.

1 Q What information, if any, do you possess with respect
2 to the actual waste disposal practices themselves
3 prior to 1983?

4 A I have no knowledge of that.

5 Q You have no knowledge as Planner?

6 A No.

7 Q With respect to Paragraph 18, what information, if any,
8 do you possess?

9 A Again, the City Planning Department has prepared a
10 number of pre-applications to the City and, I believe,
11 the Federal government, for possible funding for
12 waterfront parks, so-called Heritage Parks and
13 Recreational Facilities. The City Planning Department
14 has prepared a recreation and open-space master plan,
15 1979, which had a five-year span to 1983. We are,
16 the Planning Department, is traditionally charged with
17 the provision or maintenance, the provision of
18 recreational facilities in the City of New Bedford
19 including the waterfront area.

20 Q Those studies and applications that you just referred
21 to, are copies of those available?

22 A Yes, they are.

23 Q And what department or commission of the city would
24 have possession of them?

1 A I think the Planning Department would be the best
2 resource for that.

3 Q What is your best estimate of the number of such
4 records or reports or studies? How many are there
5 of them?

6 A In excess of five less than 15. I'm not sure. There
7 is a considerable number of them.

8 Q When was the last such plan produced?

9 A 1978.

10 Q Is the city in the process of developing any future
11 plans?

12 A Yes. There is a draft being prepared of the update
13 to the recreation and open-space master plan which
14 expired in 1983.

15 Q At what stage of preparation is that draft?

16 A Planning stage. Little further than the planning
17 stage. A draft would be available in mid-June.

18 Q In developing plans, is the practice of the Planning
19 Department of the City of New Bedford to produce a
20 draft, accept comments thereon and ultimately produce
21 a plan?

22 A Yes. That is the practice.

23 Q Is there any written documentation which was produced
24 prior to what you described as a draft?

1 A Yes.

2 Q Does that pertinent documentation have a title or
3 titles?

4 A No.

5 Q Are there preliminary drafts circulated before the
6 draft that is exposed to comments?

7 A Yes.

8 Q Is a preliminary draft now available?

9 A No.

10 Q Am I correct in the assumption that the plan itself,
11 updates to the master plan, is in the very early stages
12 of preparation?

13 A You are incorrect.

14 Q What stage is it in?

15 A Started in, I would say, January to be completed by
16 mid-June. This is now the end of May. I would say
17 the rough draft is 75 percent complete.

18 Q Does the draft materially alter the existing master
19 plan?

20 A No.

21 Q What are the principal features of the preliminary
22 draft that your department is working on? Right now.

23 A This is the recreation open-space master plan, not
24 also known as master plan for the City of New Bedford.

1 We are correct in assuming that?

2 MR. McLAUGHLIN: Okay.

3 THE WITNESS: The structure is based
4 upon a, inventory of all existing playgrounds, play
5 lots, any fields, School Department controlled, Park
6 Department controlled, facilities for the City of
7 New Bedford, there is a general goal and objective
8 statement correlation with existing land use for
9 compatibility. There is a characterization of the
10 service radius of each one of those facilities based
11 upon national norm. There is, again, an inventory of
12 existing equipment, existing site features and the
13 problems of those that are deficient or don't measure
14 up to the existing norm and there is a financial
15 objective statement.

16 Q Does that preliminary draft contain any proposals for
17 the development of additional waterfront parks and
18 recreational facilities?

19 A I believe the extent of the waterfront development
20 includes marine parks on Popes Island and the
21 development of Palmers Island in the New Bedford
22 Harbor only.

23 Q What is the proposed development of Popes Island as
24 contained in the preliminary draft?

1 A Popes Island is targeted expressly for a marina.

2 Q With respect to Palmers Island.

3 A It is geared towards passive recreation, five acres of
4 passive recreation.

5 Q When you use the term "passive recreation," what do you
6 intend to describe by those two words?

7 A Nonactive. I don't mean to be facetious. Passive
8 recreation would be one where you don't have a variety
9 of play areas, play fields, active use facilities,
10 more of a shoreline, a walking area, a sitting area,
11 a response area.

12 Q And what development of Palmers Island is considered
13 in the preliminary draft, if any?

14 A No development to occur on the island itself.

15 Q And any development with respect to access to the
16 island?

17 A No. There exists access -- I'm sorry. I will say
18 that access to the island is proposed by a footbridge.

19 Q And the footbridge would lead from the island to where?

20 A The United States Army Corps of Engineers hurricane
21 barrier owned by the city and maintained by the
22 United States Army Corps of Engineers.

23 Q The preliminary draft proposal of Palmers Island
24 utilized for that purpose?

1 A Yes.

2 Q And the proposed funding would be obtained for
3 installation on the footbridge?

4 A Yes.

5 Q And with respect to Popes Island for development as a
6 marina, the preliminary draft proposes that the land
7 be taken at Popes Island for use as a marina?

8 A The city presently owns the land. It is under the
9 jurisdiction of the Park Department.

10 Q And does the preliminary draft propose that all or
11 some of Popes Island be sold to developers for use as
12 a marina?

13 A No. None of it is proposed for sale. It would be a
14 lease operation where the city would maintain control
15 and turn the operation to a private operator.

16 Q The city would establish the facility and then lease
17 it to a private party?

18 A As proposed now we are hoping that the State will
19 provide the facility.

20 Q And the preliminary draft proposes funds for use and
21 pursuing that objective use of it?

22 A The draft suggests the funding sources that are
23 available.

24 Q With respect to Paragraph 19, what information, if any,

1 you possess regarding the documents which relate to
2 the general economic conditions of New Bedford and
3 the various industries?

4 A The city has in the past prepared statistical monographs.
5 Unfortunately, only as recent as 1973, the statistical
6 gathering and all of the historical statistics are now
7 done by the Division of Employment Security. We

8 cited Fred Cahill the regional economics as the
9 person we get our information from.

10 Q When you say "our information," what information do
11 you receive from Mr. Cahill?

12 A Employment trends, raw employment data on a monthly
13 basis which allows us to sort of correct The standard
14 Times to see the employment figures that comes out is
15 correct. As far as economical conditions, there is a
16 monograph that is put out by the executive office on
17 the State level for all 351 cities and towns in the
18 state. That may be a more unbiased picture of the
19 economical picture in the city.

20 Q What statistics of documentation does the Planning
21 Department possess with respect to real estate values
22 in the City of New Bedford?

23 A None.

24 Q Does the Planning Department utilize any such

1 information?

2 A Occasionally.

3 Q When it does, it obtains it from the assessors?

4 A The assessors' office. Yes.

5 Q And you utilize 3-S forms that are sent into the
6 State on a monthly basis as a source of information
7 regarding the value of real estate property?

8 A I'm not familiar with the 3-S form.

9 Q What form is the information that you obtain on?

10 A Land values, the assessors have a record of each plot
11 and lot in the City of New Bedford with a land value,
12 a square footage, record of owner, a zoning
13 classification, classification which interdepartmentally
14 has been prepared by the City Planning Department in
15 reference to them. That is the form that is available
16 to us other than book and page of deed records.

17 Q Is the information on that form in the Planning
18 Department utilized for its duties?

19 A Yes.

20 Q Mr. Kennedy, you made reference, I believe, to a
21 Route 6 Bridge Project. What is the Route 6 Project --

22 MR. CONNOLLY: The Fairhaven Bridge?

23 MR. McLAUGHLIN: Yes.

24 A The New Bedford/Fairhaven Bridge replacement is a

1 project sponsored jointly by the United States
2 Department of Transportation and the Massachusetts
3 Department of Public Works. The city's involvement
4 has been sort of a beneficiary in some incidences a
5 steering committee to replace a swing span dated
6 circa 1904 with a double leaf vascul type of
7 operation. The theory is that the replacement of this
8 bridge which has been victim to chronic breakdowns in
9 the past several years is to replace it with this type
10 of a bridge, therefore, affording economic opportunities
11 in the northern harbor by increasing the beam of
12 vessels able to be serviced at the Port of New Bedford.
13 The transportation issues are still a little bit fuzzy
14 in the Federal government as well as the State. The
15 design contract has been let to Suedrup & Parcel
16 design firm which has been involved in the project
17 for 16 years.

18 Q You indicated that the transportation issue is fuzzy.
19 First of all, what do you describe when you use the
20 words "transportation issue"?

21 A The transportation issue, as I am referring to it, is
22 the interim access to Fairhaven from New Bedford or
23 vice versa. When the bridge construction takes the
24 Route 6 link out of operation, there is the need for a

1 very sensitive study of the bypass procedure involved.
2 It takes transportation over -- rather I'm not sure
3 how to explain the Class 1 or Class 2 type roads in
4 the city or in the Town of Fairhaven roads that are
5 not particularly well-suited to heavy vehicles and the
6 frequency of use that is going to be generated by the
7 downtime during bridge construction.

8 So that is the major transportation
9 issue as I see it.

10 Q When you use the word "fuzzy," that indicates that the
11 parties responsible for making decisions with respect
12 to that transportation issue have not adopted a plan
13 for detouring traffic during the transportation process?

14 A As I understand it, there is no consequences as to
15 how interim traffic will be handled at this point.

16 Q Is the status of the study with respect to that issue
17 in any way delaying implementation of the project?

18 A I believe that that is one of the controlling factors.

19 Q What other factors are there, to your knowledge?

20 A The other factor, to my knowledge, is the disposition
21 of approximately 17,000 cubic yards of what will be
22 perhaps called spoiled dredge material.

23 Q And the figure of 17,000 cubic yards, what is the
24 basis for the use of that amount?

1 A That was generated by the consultants who prepared
2 the Environmental Assessment.

3 Q Which consultants were they?

4 A I believe they used Suedrup & Parcel.

5 Q And have you seen a copy of the consultants' reports?

6 A Yes, I have.

7 Q When was that report generated?

8 A I believe the final report was generated in 1984 or
9 1985 within two years.

10 Q Does the city possess a copy of that report?

11 A I have indicated that they do. The Environmental
12 Assessment of the Fairhaven/New Bedford Replacement --

13 MR. CONNOLLY: Item No. 6. Not
14 exhibit, but item.

15 THE WITNESS: Yes.

16 Q Other than the transportation issue and the disposal
17 of 17,000 cubic yards of dredge material, what other
18 matters or issues are delaying the implementation of
19 the New Bedford/Fairhaven Bridge Project?

20 A None to my knowledge.

21 Q The design contract has been let?

22 A It is my understanding that it has been let and I
23 believe the design contractor is Seeyle & Stevenson.

24 Q Has the City of New Bedford conducted any studies with

1 respect to the disposition of that 17,000 cubic yards
2 of material?

3 A No.

4 Q Are you aware of any studies that do exist with
5 respect to disposition of that 17,000 cubic yards of
6 dredge material?

7 A Yes. The Environmental Assessment previously
8 mentioned does list alternatives for the disposition
9 of that material.

10 Q That is a document that is produced somewhere around --

11 THE WITNESS: 1984, 1985.

12 Q Can you recall the substance of what is contained in
13 that report with respect to disposition of the dredge
14 material?

15 A There are several sites which are targeted for the
16 disposal of the material that is excavated during
17 bridge construction, specifically, I know of one which
18 is Marsh Island in Fairhaven has met some rather stiff
19 neighborhood local opposition. The other alternatives
20 are listed. However, you will have to find those in
21 the documents.

22 Q You have no present recollection of those?

23 A I rather not pinpoint areas that could be totally
24 incorrect.

1 Q Are you aware of any other studies other than that
2 one you referred to?

3 A No, I am not.

4 Q Is there a calendar in existence for the commencement
5 of the Fairhaven/New Bedford Route 6 Bridge Project?

6 A If there is, it's a very well-kept secret within the
7 bowels of the Department of Public Works on the State
8 level.

9 Q What would be the, what, to your knowledge, was the
10 funding source for that project?

11 A I believe it is a transportation bond issue within
12 the Commonwealth.

13 Q Referring to the City of New Bedford, what plans, if
14 any, are in existence which would involve dredging in
15 the New Bedford Harbor by the City of New Bedford?

16 A None by the City of New Bedford.

17 Q Well, what projects are you aware of that exist by
18 any other party which involved dredging in the New
19 Bedford Harbor?

20 A Future or prior?

21 Q Future.

22 A None to my knowledge that would require any dredging.

23 Q What past dredging activities are you aware of?

24 A Most recent was a project conducted by Ralph Packer,

1 Vineyard Haven to construct a shallow draft barge
2 loading facility to transport construction material
3 to the Cape and the islands. That occurred in 1984.

4 Q In what section of the harbor was that project?

5 A In the area known as the North Terminal.

6 Q And was that project completed?

7 A That project is completed.

8 Q What other projects are you aware of that involved
9 dredging?

10 A None that I am aware of that I can recollect.

11 Q To your knowledge, has the city itself been involved
12 in dredging in New Bedford Harbor?

13 A It has.

14 Q When was the last such instance?

15 A I can't give you a date but the project was in
16 conjunction with a preparation of a turning basin in
17 the Northern Terminal area.

18 Q Do you have a best estimate as to when that project
19 took place?

20 A No, but it is in Exhibit No. 6.

21 Q Other than the dredging for the turning basin and
22 the vicinity of the North Terminal, are you aware of
23 any other dredging that was done by the City of New
24 Bedford or contractors working for --

1 THE WITNESS: I am not aware of it.

2 No.

3 Q Does the Planning Department have responsibility for
4 creating plans with respect to the use of beaches in
5 the City of New Bedford?

6 A I would say we exercise our authority in cooperation
7 with the Recreation Department and Park Department.

8 Q What beaches exist in the City of New Bedford which
9 are the responsibility of the city? You understand
10 that question?

11 A Yes. The beach known loosely as East Beach and a
12 beach known as West Beach or Municipal Beach.

13 Q And those two beaches fall within the jurisdiction for
14 operation under the Recreational Department?

15 A Slash Park Department.

16 Q Have you been involved in any plan at any time in
17 your career as an employee of the City of New Bedford
18 with respect to projects involving those beaches?

19 A Yes.

20 Q When was the first such instance and to which you were
21 so involved?

22 A 1974.

23 Q Can you briefly describe that project?

24 A Planning for the relocation of concession facilities

1 at what is known as East Beach.

2 Q Any other involvement since 1974 in that area?

3 A We have included in the recreation and open space
4 master plan, recommendations for both East and West
5 Beach.

6 Q And that was included sometime prior to 1979?

7 A No. That was post-1979.

8 Q Was that an update to the recreation master plan?

9 A Yes, it was.

10 Q And in what year was that inclusion created by the
11 Planning Department?

12 A That would have been 1978, 1979.

13 Q And since then has the Planning Department had --

14 THE WITNESS: No.

15 Q -- no activities with respect to the beaches?

16 A No.

17 Q On the preliminary draft which is being worked on by
18 the Planning Department, would that contain any
19 reference to the beaches in the City of New Bedford?

20 A It does and it will.

21 MR. McLAUGHLIN: We will take a
22 five-minute recess.

23 (Whereupon, a short recess was then
24 taken.)

1 Q With respect to the reference in the preliminary draft
2 being worked on by your office, Mr. Kennedy, what
3 reference is made to the beaches?

4 A There are recommendations made for both the East and
5 the West Beach.

6 Q What recommendations are made with respect to East
7 Beach?

8 A East Beach would be to consolidate the sanitary
9 facilities, concession areas onto an area, stoned
10 jetty known as Monkeys Island to allow for the shared
11 use of existing park facilities for active recreation
12 such as basketball, to refurbish the existing playground
13 equipment and I believe that is it.

14 Q Does the preliminary draft with respect to East Beach
15 propose that basketball facilities be available for
16 nonsummer activities?

17 A No.

18 Q It would be year-round use?

19 A No. For summer, I think.

20 Q For nonsummer use?

21 A I'm sorry No. It would not be for nonsummer use.
22 It would be for summer use.

23 Q Summer, winter and whatever? Year-round use?

24 A I missed that.

1 MR. McLAUGHLIN: Let's start over
2 again.

3 Q The preliminary draft envisions a shared use of the
4 parking facilities; is that correct?

5 A Uh-huh.

6 Q And the parking facility would be used in part for
7 parking of vehicles for people to use the beach?

8 A Uh-huh.

9 Q And in part it would also be used as a basketball
10 court?

11 A During the summer months.

12 Q Would that necessitate the removal of certain parking
13 locations?

14 A No.

15 Q Where would the basketball facilities be located?

16 A They would be located in the parking lot. It is a
17 shared facility. If a car is parked under it, you
18 can't play.

19 Q Is there any proposals? Are there any proposals for
20 reduction of the parking facilities for East Beach?

21 A No.

22 Q Are there any proposals for the extension?

23 A No.

24 Q Have any studies been made by the city with respect to

1 the use of the parking facilities at East Beach?

2 A I believe the Recreation Department has figures since
3 they were traditionally the caretaker of the collected
4 fee at the entrance.

5 Q Have you ever seen those statistics?

6 A I have not.

7 Q With respect to the West Beach facility, what proposals
8 are contained in the preliminary draft?

9 A To eliminate parking from the sea wall area. To
10 include an area for parking within existing Hazelwood
11 Park which is directly to the east of West Beach. To
12 repair and renovate the bathhouse facilities.

13 Q Would the cessation of parking by the sea wall and
14 the implementation of a new parking area in the
15 Hazelwood Park area result in a net increase or a
16 net decrease in the amount of parking spaces available
17 for West Beach?

18 A There would be a slight increase.

19 Q Are you aware of any studies which have been conducted
20 with respect to the demand for parking at either East
21 Beach or West Beach?

22 A I'm not aware of any studies indicating demand. We
23 have done interoffice memorandums which have evaluated
24 existing police citations in the south end at the

1 beach and we have done actual vehicle counts on a
2 two-year basis, extrapolating all that, giving us the
3 idea we have a perceived parking shortage, not a real
4 parking shortage but the necessity to consolidate
5 parking in one area is prevalent.

6 Q When you say there is a "perceived parking shortage,"
7 is it the finding of your department that the public
8 perceives that there is a parking shortage at East
9 Beach?

10 A Yes. And myself and my staff being part of the public
11 have experienced that feeling.

12 Q You have driven there?

13 A I have used the beaches and I experienced that feeling
14 that it is a perceived nuisance and I am determined to
15 take care of it.

16 Q So that when you go to East Beach you will not have to
17 go away?

18 A Put a parking lot so I can walk across the street and
19 go to the beach, yes. That is planned.

20 Q And you do use East Beach yourself?

21 A I use both beaches. We are talking East Beach now, but
22 I do use both beaches.

23 Q Family also?

24 A Yes.

1 Q You have been present at East Beach within the last
2 year?

3 A Yes.

4 Q To use it as a recreational facility for you and your
5 family?

6 A Yes.

7 Q And you observed the parking lot on those occasions?

8 A On East Beach? Yes. I have.

9 Q And on occasion you have perceived that the parking lot
10 was full?

11 A No. The parking lot has never been full.

12 Q Why is there a perception --

13 THE WITNESS: Because the people --
14 here is the issue. Because people that use the parking
15 facility on the East Beach will park as close as they
16 can to the entrance and because the gates are not
17 policed or patrolled, there is no fee excised from
18 those patrons using the parking facility. Now that
19 people park, number one, indiscriminately around the
20 entrance; and, number two, if you are out of where the
21 whole glut of folks have parked, you cannot get out
22 of the parking lot. Some people park on the street.
23 There is no more parking on the street and it is by
24 virtue of there is a certain sense of fair that you

1 will never get your car out when you want it if you
2 park in the lot.

3 I'm trying to resolve the problem
4 and that is not fair to you.

5 MR. McLAUGHLIN: Well, it is.

6 Q The perception of parking difficulty affects the use
7 of the East Beach?

8 A Yes, it does. In my estimation.

9 Q Is that true also of West Beach?

10 A West Beach even more so because there is no central
11 confined parking area. There is a long linear strip
12 which is used for parking.

13 Q And as one approaches West Beach from the center of
14 the city, that linear parking strip is on the right or
15 on the ocean side of the road?

16 A On the right. Yes.

17 Q And the police are fairly active in giving citations
18 on the opposite side of the street; is that correct?

19 A On both sides of the street. As a matter of fact,
20 they have a nonsensical group of signs which says,
21 you must park facing the water so that you can't speed
22 out into traffic as you see an acquaintance going by.
23 There is a whole host of incongruous little laws which
24 apply to the parking on the West Beach which make

1 enforcement particularly difficult, but, nevertheless,
2 enforcement is being attempted.

3 Q And the perceived parking problem of West Beach affects
4 the recreational use of that beach?

5 A Yes.

6 Q The preliminary draft envisions blacktopping of part
7 of the Hazelwood Park to use that as a parking area?

8 A The proposal includes using the portion of Hazelwood
9 Park for parking, whether it be peastone , stone dust,
10 blacktop is a cost consideration. We are not
11 avocating that much.

12 Q And that would remove the vehicles from the West Beach
13 area?

14 A It is hoped.

15 Q Down by the water?

16 A Yes.

17 Q Did you use those beaches as a child growing up?

18 A As a child growing up? Yes. I did.

19 Q And you have used those beaches over the years?

20 A I have.

21 Q And you are aware that on occasion those beaches have
22 been closed?

23 A To my chagrin. Yes, I have.

24 Q And they have been closed for reasons of coliform

1 bacteria?

2 A As a young child growing up my father used to say
3 there was, "poo-poo in the water." Now it is called
4 coliform. My kids still say there is, "poo-poo in the
5 water," but that is not true.

6 Q Other than for coliform, are you aware of the beach
7 being closed for any other reason?

8 A Other than for coliform?

9 Q Right.

10 A No. I am not aware of that.

11 Q With respect to, say, the New Bedford/Fairhaven Bridge,
12 where did you live the first 23, 24 years of your life?

13 A In the west end of New Bedford.

14 Q What street?

15 A Florence Street.

16 Q That is up by the park?

17 A Close to Buttonwood Park. Yes.

18 Q Did you ever see any use of the harbor area to the
19 north of where the dike now exists? Did you ever see
20 that area used for bathing in your first 10 years of
21 your life?

22 A No.

23 Q Did you observe that occasion during the summertime in
24 the first 10 years of your life?

1 MR. CONNOLLY: If you recall.

2 A No.

3 Q Never observed that?

4 A Bathing?

5 Q No. Did you observe the harbor, first of all, in
6 the summertime when you were growing up, your first
7 10 years of your life?

8 A Yes.

9 Q And in that first 10 years of your life, did you ever
10 see anybody swimming in there?

11 A Not to my knowledge. I don't recall whether I did or
12 not. I never, no.

13 Q Is it fair to say that, as far as you know, that area
14 at least during your lifetime was not used as a
15 bathing or swimming area?

16 A It is fair to say that the New Bedford side, north of
17 the hurricane barriers as we know it as, as we were
18 discussing it, has not been used for bathing.

19 Q Are you aware as to whether the Fairhaven side of that
20 area was ever used for bathing during your lifetime?

21 A I believe that the Fairhaven side has been used for
22 bathing. Yes.

23 Q Are you referring to the Fort Phoenix?

24 A I'm referring to the Fort Phoenix area and the area

1 directly north of the hurricane barrier which goes
2 into Fairhaven. There are several large estates
3 there which have beachfront property and I have never
4 seen anybody bathing there.

5 Q Well, in all of the time you lived in New Bedford, you
6 never saw anybody bathing there? I'm talking on the
7 harbor side, not the open ocean side of Fort Phoenix.

8 A I will say I haven't seen anybody that I can recall.

9 Q Has your father ever given you instructions about
10 going into the water in that area?

11 A He said I probably would bounce off it jumping in.
12 He also said, if your friend jumped off it, because
13 he did it, you have to do it? If somebody jumped off
14 the Fairhaven Bridge, does that mean you have to?
15 And I would say, "No." My father was a wise man.

16 Q Did you ever see anybody fishing in that same area
17 that is the area north of the now-existing hurricane
18 dike?

19 A Yes. I have seen people fishing north of that area.

20 Q In what location?

21 A I have seen folks fishing as far up as the Coggeshall
22 Street Bridge.

23 Q And when was the last time that you saw people so
24 fishing, to the best of your memory?

1 A Within six months.

2 Q Do you use the Fort Phoenix recreational area at all?

3 A Not on a regular basis, but I have used the Fort
4 Phoenix area.

5 Q What commercial fishing are you aware of within that
6 same area, that is, the harbor north and what is now the
7 dike?

8 A I'm not aware of any commercial fishing that occurs
9 in that area.

10 Q Did you ever see any taking place in that area?

11 A No, I haven't.

12 Q Mr. Kennedy, the valuation of property, industrial
13 and residential, impacts in some ways the projects
14 and plans of the Planning Department; does it not?

15 A The value of real estate impacts the Planning Board?

16 Q In planning for projects which are planned by --

17 THE WITNESS: I think that is sort of
18 kind of after the horse. No. It should not work that
19 way.

20 Q The planning and projects of the Planning Department
21 impacts property values of the city?

22 A Absolutely.

23 Q In considerations that is utilized, that is valuations
24 of properties in projects that are determined to be

1 implemented by the city?

2 A Yes.

3 Q What impact, if any, on real estate property values
4 is there from the allegations regarding PCB
5 contaminants in the New Bedford Harbor?

6 A I would think that since there are only less than
7 12 households that border it, Clarks Cove area in
8 New Bedford or Dartmouth and the Acushnet River
9 Estuary, that the residential impact is minor or
10 the devaluation from a residential standpoint with
11 over 39,000 housing units, 12 impacted perhaps
12 adversely is rather slight. The rest of the impacted
13 properties would be commercial or industrial which
14 the contamination of the estuary or Clarks Cove have
15 insignificant proportions.

16 Q This may be redundant but I am trying to find a quick
17 way of doing something. You testified that you were
18 aware that there was some dredging conducted by the
19 city from a maneuvering base from the North Terminal?

20 A Repeat it.

21 MR. McLAUGHLIN: I will rephrase the
22 question.

23 Q You are aware that the city did some dredging with
24 respect to the maneuvering basin for the North

1 Terminal?

2 A Yes. The city sponsored a project to conduct some
3 dredging of the turning basin.

4 Q What is your best estimate as to when that occurred,
5 if you have such an estimate.

6 A 1970. Boy, I would have to refer to the documents.
7 The exhibits there. No. 6.

8 Q The information would be contained in No. 6?

9 A Yes.

10 Q Are you aware that the City of New Bedford did
11 dredging projects off of Fort Rodman in 1972?

12 A No, I am not.

13 Q Are you aware that the City of New Bedford did
14 dredging projects in 1977 upstream of State Pier?

15 A Upstream of State Pier? No. I am not.

16 Q Are you aware of one in 1979 by the city in the
17 vicinity of Tina Avenue?

18 A Tina Avenue is in the North Terminal area. That may
19 be similar to the area of the turning basin.

20 Q Do you know where the Nasketucket Bay is?

21 A No. I don't.

22 Q Did the City of New Bedford participate in any surveys
23 regarding future dredging requirements?

24 A The Planning Department didn't. The Harbor

1 Redevelopment Commission may have, but I'm not sure
2 of that. I believe that would be best addressed to
3 the Executive Director of the HDC.

4 Q Paul Saunders?

5 A Yes.

6 Q But the city itself did not participate, to the best
7 of your knowledge?

8 A To the best of my knowledge, no.

9 Q What effect, if any, has the allegations regarding
10 presence of PCBs in New Bedford Harbor have upon the
11 use of the beaches in the City of New Bedford?

12 A To the best of my knowledge; the issue of PCBs,
13 alleged PCB contamination has never surfaced as a
14 recreational issue. It has never been addressed as
15 such. I would say no impact.

16 MR. McLAUGHLIN: I have no further
17 questions.

18 CROSS-EXAMINATION

19 MS. MAUL: Off the record.

20 (Off the record.)

21 MR. CONNOLLY: Whoever is asking
22 questions, could you just identify yourself and your
23 client for Mr. Kennedy's benefit?

24 MS. MAUL: I am Mary Ann Maul and I

1 am representing the Plaintiff.

2 Q (By Ms. Maul) Earlier you were talking about the
3 harbor lines, I believe, and you mentioned that you
4 thought the EPA had changed the harbor lines; is that
5 correct?

6 A No. I believe now, I may be wrong, but I think I said
7 it's in 1970. In 1970 the U.S. Pier and Bulkhead
8 Lines was established in the City of New Bedford were
9 abolished, to the best of my knowledge, the U.S. Army
10 Corps of Engineers -- when the USPA was formed, I
11 believe in 1970. I think there is a cause in effect
12 but I didn't explore it. I think that was what I
13 meant to express.

14 MS. MAUL: Thank you. That clarifies
15 it.

16 Q You were discussing the factors which may have delayed
17 construction of the replacement for the New Bedford/
18 Fairhaven Bridge?

19 A Yes.

20 Q You mentioned two factors, one of those was the
21 disposal of 17,000 approximate cubic feet of spoil
22 cubic yards. Did you identify that as a factor also
23 causing delay of that project?

24 A Yes, I did.

1 Q Do you have any knowledge of any closure of fishing
2 by the State of Massachusetts in the New Bedford
3 Harbor area?

4 A Yes, I do.

5 Q And what is that?

6 A The extent of the closure?

7 Q What is it that you know about the closure?

8 A It is posted almost throughout the entire harbor area
9 that, number one, that fishing is not allowed.
10 Shellfishing is prohibited. The notice do read in
11 English and in non-English. I mean in Spanish.
12 There are warnings posted throughout the area. That
13 is the area closed to fishing, shellfishing as a
14 result of chemical substances.

15 Q PCBs?

16 A Yes. PCBs.

17 Q Do you know how long those warnings have been posted?

18 A I'm sorry. I don't. I should defer to the
19 shellfishing warden. I think you will get a chance
20 to speak to him later.

21 Q All right. And you also mentioned your observations
22 of fishing in the northern part of the harbor?

23 A In the area which is posted, yes.

24 Q Yes. You testified that you were not aware of

1 commercial fishing in that area?

2 A Not aware of commercial fishing.

3 Q How would you be able to distinguish between
4 commercial fishing from recreational fishing?

5 A Probably by the size of the fisherman, unfortunately.

6 Q You testified that the PCB contamination affect on
7 commercial or industrial uses of the waterfront was
8 in an insignificant proportion. Could you explain
9 that?

10 MR. CONNOLLY: I object to the form.
11 I think it was his opinion. It was asked for his
12 opinion.

13 MS. MAUL: Yes. It was.

14 THE WITNESS: If you want me to
15 restate my opinion --

16 MR. CONNOLLY: Just answer the
17 question.

18 THE WITNESS: I'm sorry. What is
19 the question? I said insignificant proportion.

20 Q I believe you did. Would you explain that?

21 A I believe that the use of the industrialized harbor
22 by nonresidential uses which probably make up
23 99 percent use of the harbor have not been adversely
24 impacted by the alleged PCB contamination and bottom

1 sediment.

2 MS. MAUL: Could you repeat that
3 last answer?

4 (Whereupon, the last answer was then
5 read back by the stenographer.)

6 Q Could those uses which you are speaking of being
7 distinguished from plans for future use?

8 A The existing New Bedford Harbor line is, to the best
9 of my knowledge, at least 95 percent development in
10 an industrial or commercial capacity, the long range
11 planning would seem to indicate that commercial and
12 industrial uses will prevail. We are experiencing
13 little growth or market for residential use along the
14 developed and perhaps redeveloped waterfront.

15 Q Could there be, perhaps for improving existing
16 commercial or industrial --

17 MR. AYLWARD: Objection as to the
18 form.

19 MS. SWEENEY: Objection.

20 MR. McLAUGHLIN: Objection.

21 MS. MAUL: I will try to rephrase it.

22 Q Could future redevelopment of existing uses be
23 affected by the PCBs?

24 MR. AYLWARD: Objection to the use of

1 the word could and not asking what he knows about it
2 but to speculate.

3 MS. SWEENEY: Objection.

4 MS. ROBERTSON: Objection.

5 MR. CENTOLA: Objection.

6 MR. McLAUGHLIN: Objection.

7 MR. CONNOLLY: I'm going to place
8 an objection also to this line of questioning. I
9 think it is beyond the scope of his designation here
10 today and this line of questioning I have let go
11 probably too far as it is.

12 Q All right. Then you don't know, do you, whether
13 redevelopment of existing uses has been effected by
14 PCB contamination?

15 MR. McLAUGHLIN: Objection.

16 MR. CONNOLLY: Same objection.

17 MS. MAUL: What is the objection?

18 MR. McLAUGHLIN: I think the question
19 is vague. It hypothecates that there has been some
20 proposals of plans for redevelopment of which he is
21 unaware of.

22 MS. MAUL: Not necessarily.

23 MS. ROBERTSON: Your question lacks
24 foundation on several grounds. You haven't established

1 any foundation in your question and I suggest it goes
2 well beyond the scope of the deposition subpoena
3 notice.

4 MS. MAUL: I think it is within the
5 scope of the examination that has been conducted.

6 MS. ROBERTSON: Counsel has not
7 waived any objections.

8 MR. McLAUGHLIN: But let him answer --

9 MR. CONNOLLY: Right. Subject to the
10 objection. Yes.

11 THE WITNESS: Now, the question
12 again one more time.

13 MS. MAUL: If you could read it back.

14 (Whereupon, the last question was
15 then read back by the stenographer.)

16 Q Redevelopment, the potential of the inner harbor has
17 not seemed to be concerned with the alleged PCB
18 contamination at this time.

19 Q You testified that you did not believe that PCBs have
20 affected recreational use of the beaches?

21 A Yes.

22 Q What did you base that on?

23 A I based that largely upon like awareness. There has
24 been no concentrated effort to back up allegations that

1 bottom sediments are contaminated in the inner harbor
2 and, therefore, migrated on the outer harbor, it may
3 be the public's perception but I think recreational
4 has not diminished as of yet and that may be as a
5 result of inadequate public dissemination of what
6 data is available and to what degree contamination
7 does exist. I think it is a case of public perception
8 not being keen to the existence of any type of
9 contamination of coliform or heavy metals or whatever.

10 Q You didn't have any studies to support your opinion on
11 that?

12 A No. No, I am gauging it on a perception, I would
13 think the question I was asked was bathing or the use
14 of the beaches decreased as a result and I said, in
15 my opinion, and if you want to know, if it is based
16 upon factual information, the studies which we entered
17 into exhibits do give specially combined sewer
18 overflow studies which give same qualifications within
19 the Clarks Cove area and the Acushnet Estuary. There
20 is not a great deal of information alleging that the
21 migration of PCBs has occurred in the vicinity of
22 those areas used for normal bathing.

23 Q Wasn't the data of that study before the official
24 closure of 1979 of the fishing areas of the PCBs?

1 A No. The date of that study was 1983. The combined
2 sewer overflow study.

3 Q I'm asking of the 301(h).

4 A That was done in 1983 also. We submitted whatever
5 applications to the State and the EPA.

6 Q Was the first one in 1979?

7 A I bet it was, yes.

8 Q Did you do any additional data-gathering between --

9 THE WITNESS: Yes.

10 Q -- the two?

11 A We had refiled and the basis for refiling was that the
12 supplemental would be of materially and significantly
13 different from your initial figure or it wouldn't be
14 considered at all and we chose a new tactic for the
15 argument for waiver of secondary treatment plant in
16 1983.

17 Q What was that?

18 A I believe it was extended outflow. And extended
19 outflow with a diffuser on the end.

20 Q Okay.

21 MS. MAUL: I have no further questions.

22 Thank you.

23 (Whereupon, the deposition was then
24 concluded at 12:40 p.m.)

C E R T I F I C A T E

I, Raymond Goudreau, a Notary Public within and for the Commonwealth of Massachusetts, duly commissioned, qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that heretofore, to wit, on the 28th day of May, 1986, personally appeared before me DAVID A. KENNEDY, at the offices of Ropes and Gray, 225 Franklin Street, Boston, Massachusetts, in the afore-captioned case now pending in the United States District Court, District of Massachusetts; that the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth; that thereupon and while said witness was under oath, the within deposition was taken down by me in shorthand at the time and place herein named and was thereafter reduced to typewriting under my supervision.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have herein subscribed my hand and affixed my seal of office this 12th day of June, 1986.

Notary Public

My Commission expires 2/8/91